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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RHETT BRANDON TIPPINS,

Defendant and Appellant.

A126323

(Napa County
Super. Ct. No. CR144402/CR145806)

INTRODUCTION

Defendant and appellant Rhett Brandon Tippins appeals the trial court's calculation of custody credits following imposition of sentence in case numbers CR144402 and CR145806. Appellant contends that pursuant to the 2009 amendment to Penal Code section 4019,¹ he is entitled to additional local conduct credits in case numbers CR144402 and CR145806. We conclude that appellant's argument has merit and therefore remand for recalculation of conduct credits under amended section 4019.

FACTUAL AND PROCEDURAL BACKGROUND

In case number CR144402, the trial court suspended prison sentence and imposed three years formal probation on March 16, 2009 after appellant pled no contest to unlawful possession of a firearm with prior convictions (§ 12021, subd. (c)(1)).² On

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Appellant was charged with three counts in case number CR144402, but two counts were dismissed through a plea of no contest to the count in question.

April 27, 2009, the District Attorney filed a six-count criminal complaint against appellant in case number CR145806. On May 22, 2009, appellant pled no contest to count five, possession of a deadly weapon (§ 12020, subd. (a)), in case number CR145806.³ On August 19, 2009, appellant's formal probation in case number CR144402 was revoked due to the offense committed in CR145806 in violation of the terms of his probation. The trial court sentenced appellant to a prison term of 8 months in case number CR144402 and 16 months in case number CR145806, to be served consecutively. The abstract of judgment was filed on August 19, 2009 and appellant filed a timely notice of appeal on September 28, 2009.

DISCUSSION

The interpretation of a statute is a question of law. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.) “Retroactivity of a statute is a question of law subject to our de novo review.” (*Bullard v. California State Automobile Assn.* (2005) 129 Cal.App.4th 211, 217.)

Appellant contends that he is entitled to additional local custody credits under section 4019 as amended since his case was on appeal at the time the amendment took effect.⁴ Prior to the amendment of section 4019, appellant was granted two days of local conduct credits for every four days spent in local custody. (Former § 4019, subd. (f).) Under amended section 4019, appellant is entitled to “two days of conduct credit for every two days [he] spend[s] in local custody.” (*People v. Norton* (2010) 184 Cal.App.4th 408, 414 (*Norton*); See § 4019, subd. (f). stating “[A] term of four days will be deemed to have been served for every two days spent in actual custody. . . .”) Appellant relies on *In re Estrada* (1965) 63 Cal.2d 740, 748 (*Estrada*), in arguing that the amendments to section 4019 apply retroactively to his case because the nature of the

³ Appellant was charged with six counts in case number CR145806, but five counts were dismissed through a plea of no contest to the count in question.

⁴ On October 2009, the Legislature amended section 4019 to grant additional presentence conduct credits to qualified prisoners. (Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50.) These amendments took effect on January 25, 2010, during the pendency of appellant's appeal.

amendment constitutes an “amendatory statute [which] mitigates punishment.” The Attorney General relies on *People v. Rodriguez* (2010) 182 Cal.App.4th 535, 543, 545 (*Rodriguez*), a recent decision from the Court of Appeal, Fifth District, to distinguish *Estrada* and its progeny from the present case on the basis that the amendment to section 4019 does not constitute an “amendatory statute which lessens punishment” but, rather, is a statute that merely creates incentives for good behavior.

We recently addressed this question in *People v. Norton* where the “primary question before us . . . [was] whether the general presumption of prospectivity or the rule in *Estrada* controls our construction of section 4019, as amended.” (*Norton, supra*, 184 Cal.App.4th at p. 416.) After reviewing the rule in *Estrada*, we concluded that “if section 4019, as amended, constitutes an ‘amendatory statute that mitigates punishment’ within the meaning of *Estrada*, it will be given retroactive effect unless the Legislature has ‘clearly signal[ed] its intent to make the amendment prospective, by the inclusion of either an express saving clause or its equivalent.’ (Citation.)” (*Id.* at p. 417.) We determined that section 4019, as amended, is a statute lessening punishment since it operates to reduce the sentences of qualified prisoners. (*Ibid.*) We disagreed with *Rodriguez*’s emphasis on the incentive effect of conduct credits to distinguish section 4019 credits from statutes which reduce punishment, stating that “the rule in *Estrada* turns on a statute’s penalty-reducing effect, not a construction of other sources of legislative intent.” (*Id.* at p. 419.) Further, we concluded that the Legislature did not include an express savings clause or its equivalent in order to signal its intent to make the amendment prospective, thereby foreclosing any exceptions to the controlling authority in *Estrada*. (*Id.* at p. 420.) Having concluded that the amended statute operates to mitigate punishment and is without an express prospective intent by the Legislature, the Supreme Court’s decision in *Estrada* controls and the general presumption of prospective effect is rebutted. Appellant is therefore entitled to the benefit of a conduct credit calculation in accord with the amendments to section 4019 which took effect on January 25, 2010.

DISPOSITION

The matter is remanded to the trial court with instructions to amend the abstract of judgment to reflect the additional credit to which appellant is entitled and to deliver a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

Jenkins, J.

We concur:

McGuiness, P. J.

Pollak, J.